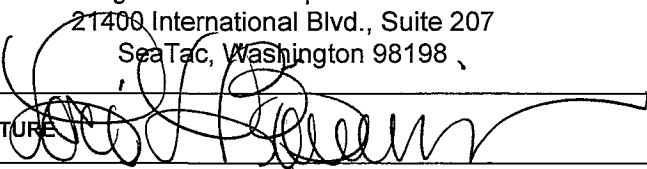


WSCA RULE-MAKING PETITION #101		September 2005 (Amends WAC 284-43-320)	
Agency: Insurance Commissioner		Requested Permanent Rule	
Description of Rule: WAC 284-43-320, is amended to require health carriers to allow chiropractors who are under contract with the carrier and who are sick or who take a vacation, to select a qualified, substitute chiropractor to care for patients until the absent chiropractor's return to work. Health carriers would be required to include in its contracts with chiropractors a provision recognizing the replacement chiropractor as the carrier's contracted provider to the same extent and under the same conditions and limitations as the absent chiropractor. Chiropractors would be required to notify the carrier of the substitution in a reasonable period of time and carriers would be permitted to limit substitution to a period of sixty (60) days, the same period set by CMS for Medicare.			
Citation of existing rules affected by this petition: Repealed: Amended: WAC 284-43-320 New:			
Statutory authority for adoption: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.44.070, 48.46.030, 48.46.200, 48.46.243and 48.30.010.			
Background and Reasons for Rule: <p>The proposed rules would protect the doctor/patient relationship and would ensure both the ongoing success of the chiropractor's clinical practice and the patient's ability to continue care with the same clinic. The proposed rules would simply allow a chiropractor already under contract with a health carrier to allow a colleague to treat patients whenever the chiropractor was unavailable due to vacation or illness - a right commonly afforded to physicians. Prohibiting chiropractors from availing themselves of locum tenens practices violate state laws that prohibit unfair discrimination against the chiropractic profession by carriers. There exists no rational on to permit locum tenens by physicians and to deny similar abilities to chiropractors.</p> <p>Carriers will not recognize the services performed by a substituting chiropractor unless that substitute chiropractor is also contracted separately with the carrier. As a consequence, patients are forced to go to strangers, often at the carrier's choosing, rather than a chiropractor introduced by and working with the patient's regular chiropractor.</p> <p>Nothing in this rule would expand either the total number of chiropractors contracted on an ongoing basis in a carrier's health care network or the amount a carrier would pay in benefits under a health plan. The rule simply permits one qualified chiropractor to substitute for another qualified chiropractor under circumstances that are widely recognized in the health care community and commonly permitted for physicians. [See accompanying cover letter for additional information.]</p>			
NAME AND ADDRESS OF PETITIONER		AGENCY RESPONSE	
Washington State Chiropractic Association 21400 International Blvd., Suite 207 SeaTac, Washington 98198		<input type="checkbox"/> Accepted - Rulemaking Notice Attached	
		<input type="checkbox"/> Alternative Means - Explanation Attached	
SIGNATURE		<input type="checkbox"/> Denied - Reasons Attached	
TITLE Lori Bielinski, Executive Director			

WSCA Rulemaking Petition #101

WAC 284-43-320 Provider contracts -- Standards -- Hold harmless provisions. The execution of a contract by a health carrier shall not relieve the health carrier of its obligations to any covered person for the provision of health care services, nor of its responsibility for compliance with statutes or regulations. In addition to the contract form filing requirements of this subchapter, all individual provider and facility contracts shall be in writing and available for review upon request by the commissioner.

(1) A health carrier shall establish a mechanism by which its participating providers and facilities can obtain timely information on patient eligibility for health care services and health plan benefits, including any limitations or conditions on services or benefits.

Nothing contained in a participating provider or a participating facility contract may have the effect of modifying benefits, terms, or conditions contained in the health plan. In the event of any conflict between the contract and a health plan, the benefits, terms, and conditions of the health plan shall govern with respect to coverage provided to covered persons.

(2) Each participating provider and participating facility contract shall contain the following provisions or variations approved by the commissioner:

(a) "{Name of provider or facility} hereby agrees that in no event, including, but not limited to nonpayment by {name of carrier}, {name of carrier's} insolvency, or breach of this contract shall {name of provider or facility} bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against a covered person or person acting on their behalf, other than {name of carrier}, for services provided pursuant to this contract. This provision shall not prohibit collection of {deductibles, copayments, coinsurance, and/or noncovered services}, which have not otherwise been paid by a primary or secondary carrier in accordance with regulatory standards for coordination of benefits, from covered persons in accordance with the terms of the covered person's health plan."

(b) "{Name of provider or facility} agrees, in the event of {name of carrier's} insolvency, to continue to provide the services promised in this contract to covered persons of {name of carrier} for the duration of the period for which premiums on behalf of the covered person were paid to {Name of carrier} or until the covered person's discharge from inpatient facilities, whichever time is greater."

(c) "Notwithstanding any other provision of this contract, nothing in this contract shall be construed to modify the rights and benefits contained in the covered person's health plan."

(d) "{Name of provider or facility} may not bill the covered person for covered services (except for deductibles, copayments, or coinsurance) where {name of carrier} denies payments because the provider or facility has failed to comply with the terms or conditions of this contract."

(e) "{Name of provider or facility} further agrees (i) that the provisions of (a), (b), (c), and (d) of this subsection {or identifying citations appropriate to the contract form} shall survive termination of this contract regardless of the cause giving rise to termination and shall be construed to be for the benefit of {name of carrier's} covered persons, and (ii) that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between {name of provider or facility} and covered persons or persons acting on their behalf."

(f) "If {name of provider or facility} contracts with other providers or facilities who agree to provide covered services to covered persons of {name of carrier} with the expectation of receiving payment directly or indirectly from {name of carrier}, such providers or facilities must agree to abide by the provisions of (a), (b), (c), (d), and (e) of this subsection {or identifying citations appropriate to the contract form}."

(3) The contract shall inform participating providers and facilities that willfully collecting or attempting to collect an amount from a covered person knowing that collection to be in violation of the participating provider or facility contract constitutes a class C felony under RCW 48.80.030(5).

(4) A health carrier shall notify participating providers and facilities of their responsibilities with respect to the health carrier's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state requirements.

Documents, procedures, and other administrative policies and programs referenced in the contract must be available for review by the provider or facility prior to contracting. Participating providers and facilities must be given reasonable notice of not less than sixty days of changes that affect provider or facility compensation and that affect health care service delivery unless changes to federal or state law or regulations make such advance notice impossible, in which case notice shall be provided as soon as possible. Subject to any termination and continuity of care provisions of the contract, a provider or facility may terminate the contract without penalty if the provider or facility does not agree with the changes. No change to the contract may be made retroactive without the express consent of the provider or facility.

(5) The following provision is a restatement of a statutory requirement found in RCW 48.43.075 included here for ease of reference:

(a) "No health carrier subject to the jurisdiction of the state of Washington may in any way preclude or discourage their providers from informing patients of the care they require, including various treatment options, and whether in their view such care is consistent with medical necessity, medical appropriateness, or otherwise covered by the patient's service agreement with the health carrier. No health carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of a patient with a health carrier. Nothing in this section shall be construed to authorize providers to bind health carriers to pay for any service."

(b) "No health carrier may preclude or discourage patients or those paying for their coverage from discussing the comparative merits of different health carriers with their providers. This

prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier."

(6) A health carrier shall require participating providers and facilities to make health records available to appropriate state and federal authorities involved in assessing the quality of care or investigating the grievances or complaints of covered persons subject to applicable state and federal laws related to the confidentiality of medical or health records.

(7) A health carrier and participating provider and facility shall provide at least sixty days' written notice to each other before terminating the contract without cause. The health carrier shall make a good faith effort to assure that written notice of a termination within fifteen working days of receipt or issuance of a notice of termination is provided to all covered persons who are patients seen on a regular basis by the provider whose contract is terminating, irrespective of whether the termination was for cause or without cause. Where a contract termination involves a primary care provider, that carrier shall make a good faith effort to assure that notice is provided to all covered persons who are patients of that primary care provider.

(8) A health carrier is responsible for ensuring that participating providers and facilities furnish covered services to covered persons without regard to the covered person's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill, or licensing restrictions.

(9) A health carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health carrier that jeopardizes patient health or welfare or that may violate state or federal law.

(10) The following provision is a restatement of a statutory requirement found in RCW 48.43.085: "Notwithstanding any other provision of law, no health carrier subject to the jurisdiction of the state of Washington may prohibit directly or indirectly its enrollees from freely contracting at any time to obtain any health care services outside the health care plan on any terms or conditions the enrollees choose. Nothing in this section shall be construed to bind a carrier for any services delivered outside the health plan."

(11) Every participating provider contract shall contain procedures for the fair resolution of disputes arising out of the contract.

(12) Every participating provider contract shall contain a "locum tenens" provision that permits a contracted chiropractor to select another licensed chiropractor who will serve as substitute in the absence of the contracted chiropractor even if the substitute chiropractor does not then contract with the carrier or the carrier's subcontracted network. The chiropractor must notify the carrier of the substitution in a reasonable time period and such substitute chiropractor shall be subject to the same terms and conditions as the absent, contracted chiropractor. The carrier may limit the time period of substitution to sixty (60) consecutive days in any one period of substitution.